

**MARKET CONDUCT EXAMINATION REPORT**  
**AS OF JUNE 30, 2004**

**Mutual of Omaha Insurance Company  
Mutual of Omaha Plaza  
Omaha, NE 68175**

**NAIC Group Code: 261  
NAIC Company Code: 71412  
Colorado Company No.: 961**

**EXAMINATION PERFORMED  
for the  
STATE OF COLORADO  
DEPARTMENT OF REGULATORY AGENCIES  
DIVISION OF INSURANCE**

**Mutual of Omaha Insurance Company  
Mutual of Omaha Plaza  
Omaha, NE 68175**

**MARKET CONDUCT  
EXAMINATION REPORT  
as of  
June 30, 2004**

**Examination Performed by**

**Stephen E. King, CIE  
Jo-Anne G. Fameree, CIE, FLMI, AIRC, ACS**

**Independent Market Conduct Examiners**

December 9, 2004

The Honorable Doug Dean  
Commissioner of Insurance  
State of Colorado  
1560 Broadway, Suite 850  
Denver, Colorado 80202

Commissioner Dean:

A market conduct examination of the Mutual of Omaha Insurance Company was conducted in accordance with and pursuant to §§10-1-203 and 10-3-1106, Colorado Revised Statutes. This examination focused on the Company's Medicare supplement insurance business, involving a review of underwriting, rating, policyholder service, marketing, sales and claims practices. The Company records were examined at their offices located at Mutual of Omaha Plaza, Omaha, Nebraska 68175.

The time period covered by the examination was from July 1, 2003 through June 30, 2004.

The results of the examination, herein, are respectfully submitted.

Stephen E. King, CIE

Jo-Anne G. Fameree, CIE, FLMI, AIRC, ACS

**MARKET CONDUCT  
EXAMINATION REPORT  
OF THE  
MUTUAL OF OMAHA INSURANCE COMPANY**

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## **COMPANY PROFILE**

Mutual of Omaha Insurance Company (“Mutual of Omaha” or “Company”) was originally incorporated in Nebraska in 1909 on the mutual assessment plan under title Mutual Benefit Health and Accident Association. In 1962, the Company reorganized its corporate structure to a mutual legal reserve basis and the present title was adopted.

## **COMPANY OPERATIONS AND MANAGEMENT**

The Company is licensed in all fifty (50) states, the District of Columbia, Puerto Rico, and the Virgin Islands. It also acts as a “Part A” fiscal intermediary of the Federal Government’s Medicare Program in most states as well as the District of Columbia.

A large portion of the Company’s individual health insurance business is developed through a network of nearly 2,000 career agents in seventy (70) offices and one (1) central agency. However, an increasing amount of business is sold through brokers and on a direct response basis.

Operations have traditionally concentrated in the individual and group accident and health fields. Historically, the Company has focused on individual and group major medical products but has also offered disability income, stop-loss, Medicare supplement, accidental death and dismemberment, dental, long-term care, critical illness and hospital indemnity coverages. In recent years, the Company has been reducing its dependence on major medical business and focusing on senior health and supplemental health insurance products.

The most current official figures available, for the state of Colorado, indicate that the Company reported approximately \$8,729,000 of Medicare Supplement insurance premiums, earned in 2003, which is an estimated 6.08% of the business sold in the State of Colorado for the reporting period.

**PURPOSE AND SCOPE OF EXAMINATION**

Independent Examiners, contracting with the Colorado Division of Insurance (DOI), in accordance with Colorado Insurance Law, §§ 10-1-201, 10-1-203 and 10-1-204.C.R.S., which allows the Commissioner the discretion and authority to schedule and conduct examinations for the purpose of auditing business practices of insurers, reviewed certain business practices of the Mutual of Omaha Insurance Company. The findings in this report, including all work products developed in the production of this report, are the sole property of the Colorado Division of Insurance.

The purpose of the examination was to determine the Company's compliance with Colorado insurance laws related to Medicare supplement insurance. Examination information contained in this report should serve only these purposes. The conclusions and findings of this examination are public record. The preceding statements are not intended to limit or restrict the distribution of this report.

Examiners conducted the examination in accordance with procedures developed by the Colorado Division of Insurance, based on model procedures developed by the National Association of Insurance Commissioners. Examiners have relied primarily on records and materials maintained by the Company, generally covering the examination period from July 1, 2003, through June 30, 2004.

The examination included review of the following:

- Company Operations / Management
- Marketing and Sales
- Producers
- Underwriting - Forms / Policyholder Services
- Underwriting - Rating
- Underwriting - Applications
- Underwriting - Cancellations
- Claims

This examination report is a report written by exception. References to any practices, procedures or files, that contained no improprieties, were omitted. Therefore, the majority of the material reviewed may not be addressed in this report. In the course of the examination, Examiners provided the Company with Examination Memorandums and Comment Forms to obtain information ask questions and/or address noted discrepancies. When Examiners issue either form, the Company is required to provide a detailed response. Generally, only the Comment Form will cite a specific statute or regulation when a potential non-compliant situation is identified.

An error tolerance level of plus or minus ten dollars (\$10.00) was allowed, in most cases, where monetary values were involved. However, in cases where monetary values were generated by computer or other systemic methodology, a zero (\$0) tolerance level was applied in order to identify possible system errors. Additionally, a zero (\$0) tolerance level was applied in instances where there appeared to be a consistent pattern of deviation from the Company's established policies, procedures, rules and/or guidelines.

When utilizing a sampling technique to select a sample file population for review, a minimum error tolerance level of five percent (5%) was established to determine reportable exceptions. However, if an issue appeared to be systemic or if, as a result of the file selection process, it was not possible to determine an exception percentage, an error tolerance percentage was not utilized. Also, if more than one sample population was reviewed in a particular area of the examination (e.g. timeliness of claims payment), and if one or more of the samples yielded an exception rate of five percent (5%) or more, the results of any other samples with exception percentages less than five percent (5%) were also included.

Examination findings may result in administrative action by the Division of Insurance. During the course of the examination, all unacceptable or non-complying practices of the Company may not have been discovered. However, failure to identify specific Company practices does not constitute acceptance of such practices. The contents of this report should not be construed to either endorse or discredit any insurance company or product.

**EXAMINERS' METHODOLOGY**

In accordance with §10-1-203, Colorado Revised Statutes, examiners reviewed the Company's business practices to determine compliance with Colorado insurance laws and regulations, as they pertain to Medicare supplement insurance companies, as shown in the following exhibit.

**Exhibit 1**

<b>Law/Regulation</b>	<b>Concerning</b>
Section 10-1-108	Duties of Commissioner – reports – publications – fees – disposition of funds - adoption of rules.
Section 10-1-109	Rules and regulations of commissioner
Section 10-1-111	Grounds and procedure for suspension or revocation of certificate or license of entities.
Section 10-1-128(6)(a)	Anti-fraud Plan
Sections 10-2-1001 to 10-2-1101	Managing General Agent Act
Section 10-2-103	Licenses - General Provisions - Definitions
Sections 10-2-401 to 10-2-417	Licenses – Licensing and Appointment of Insurance Producers
Sections 10-2-701 to 10-2-704	Licenses – Business Conduct of Licensees
Section 10-3-105	Certificate of Authority
Section 10-3-109	Reports, statements, assessments, and maintenance of records - publication - penalties for late filing, late payment, or failure to maintain.
Sections 10-3-1101 to 10-3-1104	Unfair Competition – Deceptive Practices
Sections 10-18-101 to 10-18-109	Medicare Supplement Insurance
Regulation 1-1-7	Market Conduct Record Retention
Regulation 1-1-8	Penalties And Timelines Concerning Division Inquiries And Document Requests
Regulation 1-2-9	Fees Charged by Agents/Brokers
Regulation 2-1-7	Concerning Issuance of a Certificate of Authority
Regulation 4-3-1	Minimum Standards for Medicare Supplement Policies



**Company Operations / Management**

Examiners verified the Certificate of Authority and reviewed Company management, administrative controls, as well as record retention practices.

The Company's cooperation during the course of the examination was noted.

**Marketing and Sales**

Examiners reviewed all thirty-six (36) marketing and sales pieces used in the State of Colorado during the examination period. Examiners verified that all materials had been submitted to the Colorado Division of Insurance. Additionally, the content of the material was reviewed to ensure compliance with Colorado insurance law and to verify that the Company's products were accurately represented.

**Producers**

Examiners reviewed producer contracts and commission structures used during the examination period. In addition, commission records were reviewed to ensure that all producers receiving commissions, or a percentage of premiums, were properly licensed.

**Underwriting – Forms / Policyholder Services**

Examiners reviewed all forms used during the examination period, as provided by the Company, to ensure the forms were filed and approved by the Colorado Division of Insurance. Additionally, compliance with current Colorado insurance law was verified.

**New Business Underwriting Practices and Rating**

Examiners randomly selected a sample population of fifty (50) individual new business files from a population of 793 and selected a sample population of 100 individual renewed business files from a population of 5,022. Ninety-nine renewed files were reviewed, as one (1) file was Florida business.

**Underwriting – Cancellations / Declinations / Rescissions**

Examiners randomly selected a sample population of fifty (50) individual cancellation files from a population of 249; all forty (40) individual declination files were reviewed.

Each file was reviewed to ensure that both fair and consistent underwriting practices were used, timely notifications were given and when applicable, premium refunds were timely and accurate.

**Claims**

Examiners randomly selected a sample population of 100 individual paid claims files and 100 individual denied claims files from a population of 73,094 and 10,738 files, respectively.

Examiners evaluated the Company's claims handling guidelines and specific claim file information, to determine timeliness of processing and accuracy of payment.

**EXAMINATION REPORT SUMMARY**

The examination resulted in a total of three (3) findings in which the Company did not appear to be in compliance with Colorado insurance law. The following summarizes Examiner findings.

**Company Operations / Management:** In the area of Company Operations and Management, Examiners found one (1) area of concern. The issue identified is:

- Failing to provide the OBRA certification of compliance on the Medicare supplement insurance experience reporting form.

**Marketing and Sales:** In the area of Marketing and Sales, no compliance issues or concerns were identified and thus are not addressed in this report.

**Producers:** In the area of Producers, no compliance issues or concerns were identified and thus are not addressed in this report.

**Underwriting – Forms / Policyholder Services:** In the area of Forms and Policyholder Services, Examiners found two (2) areas of concern. The issues identified are:

- Failing to include a policy provision that provides for a refund of unearned premium, when a policy is replaced by another Medicare supplement carrier or a request for cancellation is made by the insured.
- Failing, in some cases, to incorporate the fraud warning language required by Colorado insurance law.

**New Business Underwriting Practices and Rating:** In the area of New Business Underwriting Practices and Rating, no compliance issues or concerns were identified and thus are not addressed in this report.

**Underwriting – Cancellations:** In the area of Cancellation refunds, no compliance issues or concerns were identified and thus are not addressed in this report.

**Claims:** In the area of Claims, no compliance issues or concerns were identified and thus are not addressed in this report.

Results of previous Market Conduct Exams are available on the Colorado Division of Insurance's website at [www.dora.state.co.us/insurance](http://www.dora.state.co.us/insurance) or by contacting the Colorado Division of Insurance.

A copy of the Company's response, if applicable, can be obtained by contacting the Company or the Colorado Division of Insurance.

**MARKET CONDUCT EXAMINATION REPORT**

**FACTUAL FINDINGS**

**MUTUAL OF OMAHA INSURANCE COMPANY**

<p><b><u>Company Operations / Management</u></b></p>
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<b>Issue A1: Failing to provide the OBRA certification of compliance on the Medicare supplement insurance experience reporting form.</b>
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Colorado Regulation 4-3-1 Minimum Standards for Medicare Supplement Policies states in part:

Section 12. Standards for Claims Payment

...B. Compliance with the requirement set forth in subsection A above shall be certified on the Medicare supplement insurance experience reporting form.

The Company was unable to provide documentation substantiating that the required OBRA certification was filed with the Division of Insurance. Additionally, the records on file with the Colorado Division of Insurance indicate that the Company did not include the required Certification of Compliance with OBRA when the Medicare Supplement Experience Exhibit was filed with the Division.

Based on the above information, it appears that the Company is not in compliance with the requirements of Colorado Regulation 4-3-1.

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**Recommendation No. 1:**

Within thirty (30) days, the Company should provide documentation demonstrating why it should not be considered in violation of Regulations 4-3-1. In the event the Company is unable to show such proof; it should be required to provide proof that it has corrected its procedures to ensure that the required certification of compliance with OBRA claim payment standards is included on the annual financial statement as required by Colorado insurance law.

**UNDERWRITING – FORMS/POLICYHOLDER SERVICES**

<p><b>Issue E1: Failing to include a policy provision that provides for a refund of unearned premium, when a policy is replaced by another Medicare supplement carrier or a request for cancellation is made by the insured.</b></p>
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Colorado Regulation 4-3-1, Minimum Standards for Medicare Supplement Policies, states in part:

... Section 6. Policy Provisions

...D. All Medicare supplement insurance policies shall provide for a refund of unearned premium, when the policy is replaced by another Medicare supplement carrier or given a request for cancellation by the insured.

Upon reviewing the Company's individual policy/certificate forms, which were filed with and approved by the Colorado Division of Insurance, Examiners found that the forms did not contain language consistent with the requirements of Colorado Regulation 4-3-1, Section 6(D). Therefore, it appears that the Company's forms would not be in compliance with the requirements of Colorado Regulation 4-3-1.

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**Recommendation No. 2:**

Within thirty (30) days, the Company should provide documentation demonstrating why it should not be considered in violation of Regulation 4-3-1. In the event the Company is unable to show such proof; the Company should provide evidence to the Division of Insurance that it has corrected all applicable forms to include the appropriate provisions to ensure compliance with Colorado insurance law. Additionally, the required filings should be made with the Division of Insurance.

<b>Issue E2: Failing, in some cases, to incorporate the fraud warning language required by Colorado insurance law.</b>
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Section 10-1-128(6)(a) C.R.S. Fraudulent insurance acts - immunity for furnishing information relating to suspected insurance fraud - legislative declaration, states:

(6)(a) Each insurance company shall provide on all printed applications for insurance, or on all insurance policies, or on all claim forms provided and required by an insurance company, or required by law, whether printed or electronically transmitted, a statement, in conspicuous nature, permanently affixed to the application, insurance policy, or claim form substantially the same as the following:

**"It is unlawful to knowingly provide false, incomplete, or misleading facts or information to an insurance company for the purpose of defrauding or attempting to defraud the company. Penalties may include imprisonment, fines, denial of insurance, and civil damages. Any insurance company or agent of an insurance company who knowingly provides false, incomplete, or misleading facts or information to a policyholder or claimant for the purpose of defrauding or attempting to defraud the policyholder or claimant with regard to a settlement or award payable from insurance proceeds shall be reported to the Colorado division of insurance within the department of regulatory agencies."**

The Company utilized the fraud warning language below on application forms MA5847-05 and MA5848-05.

**"Any person who, with intent to defraud [or] knowing that he or she is facilitating a fraud against an insurer, submits an application or files a false or deceptive statement is guilty or [of] insurance fraud."**

The Company utilized the fraud warning language below on claim form Mu9110 9-00.

**"Laws in this state provide that any person who knowingly, and with intent to injure, defraud or deceive any insurance company, files a statement of claim containing any false, incomplete, or misleading information is guilty of a felony."**

The fraud warning language used by the Company (referenced above), which was filed with and approved by the Colorado Division of Insurance, does not appear to be "substantially the same" as the fraud warning language required by Colorado insurance law. Therefore, it appears that the Company is not in compliance with the requirements of § 10-1-128(6)(a), C.R.S.



**Recommendation No. 3:**

Within thirty (30) days, the Company should provide documentation demonstrating why it should not be considered in violation of §10-1-128 C.R.S. In the event the Company is unable to show such proof; the Company should provide evidence to the Division of Insurance that it has corrected all applicable forms to include fraud-warning language that is substantially the same as the language required by Colorado insurance law. .

**SUMMARY OF ISSUES AND RECOMMENDATIONS**

<b>ISSUES</b>	<b>Rec. No.</b>	<b>Page No.</b>
<b>COMPANY OPERATIONS AND MANAGEMENT</b>		
Issue A1: Failing to provide the OBRA certificate of compliance on the Medicare supplement insurance experience reporting form.	<b>1</b>	<b>13</b>
<b>UNDERWRITING – FORMS/POLICYHOLDER SERVICES</b>		
Issue E1: Failing to include a policy provision that provides for a refund of unearned premium, when a policy is replaced by another Medicare supplement carrier or a request for cancellation is made by the insured.	<b>2</b>	<b>15</b>
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